

Exhibit V

State of California ex rel. Ven-A-Care of the Florida Keys, Inc.
v. Abbott Laboratories, Inc., et al., Master Civil Action No. 01-12257-PBS,
Subcategory Case No. 06-11337

Exhibit to the December 21, 2009 Declaration of Christopher C. Palermo in Support
of Defendants Mylan Inc. and Mylan Pharmaceuticals Inc.'s. Opposition to Plaintiffs' Motion for Partial Summary
Judgment

NO. D-1-GV-07-001259

THE STATE OF TEXAS) IN THE DISTRICT COURT

ex rel.)

VEN-A-CARE OF THE)

FLORIDA KEYS, INC.,)

Plaintiffs,)

VS.)

TRAVIS COUNTY, TEXAS)

SANDOZ, INC. f/k/a GENEVA)

PHARMACEUTICALS, INC.,)

NOVARTIS PHARMACEUTICAL)

CORP., NOVARTIS AG, EON)

LABS, APOTHECON, INC.,)

MYLAN PHARMACEUTICALS, INC.,)

MYLAN LABORATORIES, INC.,)

UDL LABORATORIES, INC.)

TEVA PHARMACEUTICALS USA,)

INC., f/k/a LEMMON)

PHARMACEUTICALS, INC.,)

COPLEY PHARMACEUTICALS,)

INC., IVAX PHARMACEUTICALS,)

INC., SICOR PHARMACEUTICALS,)

INC., TEVA NOVOPHARM, INC.,)

and TEVA PHARMACEUTICAL)

INDUSTRIES, LTD.)

Defendants.) 201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

ROBERT GEORGE CUNARD

OCTOBER 30TH, 2008

<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>2</p> <p>3 IN RE: PHARMACEUTICAL) INDUSTRY AVERAGE WHOLESAL) MDL No. 1456 4 PRICE LITIGATION) Master File No. 5) 01-12257-PBS 6) 7 THIS DOCUMENT RELATES TO:) 8) Judge Patti B. Saris 9 State of California, ex rel.) 10 Ven-A-Care v. Abbott) Magistrate 11 Laboratories, Inc., et al.) Judge Marianne Bowler 12 Cause No. 03-cv-11226-PBS) 13 ***** 14 IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA 15 16 Master Docket No. 17 In the Matter of: CV-2005-219 18 ALABAMA MEDICAID PHARMACEUTICAL 19 AVERAGE WHOLESAL PRICE LITIGATION 20 21 This Document Relates To: 22 State of Alabama v. Mylan Laboratories, Inc. 23 No. 2005-219.50 24 25 State of Alabama v. Mylan Pharmaceuticals, Inc. No. 2005-219.51 State of Alabama v. UDL Laboratories, Inc. No. 2005-219.72 ***** *****</p>	<p style="text-align: right;">Page 4</p> <p>1 ORAL AND VIDEOTAPED DEPOSITION OF 2 ROBERT GEORGE CUNARD, produced as a witness at the 3 instance of the Plaintiffs, and duly sworn, was taken 4 in the above-styled and numbered cause on the 30th day 5 of October, 2008, from 9:05 a.m. to 6:11 p.m., before 6 DEBRA L. MCGREW, CSR in and for the State of Texas, 7 reported by machine shorthand, at the Holiday Inn 8 Express, 520 John B. Wilson Ct., Lawrenceville, 9 Georgia, pursuant to the Texas Rules of Civil 10 Procedure and the provisions attached previously. 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 IN THE CIRCUIT COURT OF THE 2 SECOND JUDICIAL CIRCUIT, IN AND 3 FOR LEON COUNTY, FLORIDA 4 STATE OF FLORIDA 5 ex rel. 6 VEN-A-CARE OF THE FLORIDA 7 KEYS, INC. A Florida 8 Corporation, by and through 9 its principal officers and 10 directors, ZACHARY T. BENTLEY 11 and T. MARK JONES, 12 Plaintiffs, 13 VS. CASE NO. 1998.CA.3032G 14 MYLAN LABORATORIES INC.; 15 MYLAN PHARMACEUTICALS INC.; 16 NOVOPHARM, LTD.; SCHEIN 17 PHARMACEUTICAL, INC.; TEVA 18 PHARMACEUTICAL INDUSTRIES, 19 LTD.; TEVA PHARMACEUTICAL 20 USA; and WATSON 21 PHARMACEUTICALS, INC., 22 Defendants. 23 ***** 24 IN THE CHANCERY COURT OF HINDS COUNTY MISSISSIPPI 25 FIRST JUDICIAL DISTRICT STATE OF MISSISSIPPI,) Plaintiff,) VS.) CAUSE NO. G2005-2021 ABBOTT LABORATORIES, INC.,) et al.,) Defendants.)</p>	<p style="text-align: right;">Page 5</p> <p>1 A P P E A R A N C E S 2 FOR THE PLAINTIFF THE STATE OF TEXAS: 3 Mr. Joseph V. Crawford 4 Mr. Jason M. Idell 5 Wright & Greenhill, P.C. 6 221 West 6th Street, Suite 1800 7 Austin, Texas 78701-3495 8 Telephone: (512) 476-4600 9 10 FOR THE PLAINTIFF THE STATE OF ALABAMA: 11 Ms. Tracy R. Davis 12 Hand Arendall, LLC 13 1200 Park Place Tower 14 2001 Park Place North 15 Birmingham, Alabama 35203 16 Telephone: (205) 324-4400 17 FOR THE PLAINTIFF THE STATE OF CALIFORNIA: 18 Mr. Eliseo Sisneros 19 Deputy Attorney General 20 Bureau of Medi-Cal Fraud & Elder Abuse 21 State of California Department of Justice 22 110 West A Street #1100 23 San Diego, California 92101 24 Telephone: (619) 688-6043 25 FOR THE PLAINTIFF THE STATE OF MISSISSIPPI: Mr. H. Clay Barnett, III (by telephone) Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. P.O. Box 4160 Montgomery, Alabama 36103 Telephone: (800) 898-2034 FOR THE RELATOR, VEN-A-CARE OF THE FLORIDA KEYS FOR THE TEXAS, CALIFORNIA AND FLORIDA CASES: Mr. James Joseph Breen The Breen Law Firm, P.A. 5755 Northpoint Parkway #260 Alpharetta, Georgia 30022 Telephone: (770) 740-0008</p>

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17 Mr. Brian Bobbitt, Videographer

18 *-*-*-*

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2 Memo, Eichelberger to Cunard, 6-28-2000,
3 Subject "Nifedipine ER Spread"
4 13 160
5 Letter, Cunard to Emmett, 5-8-01, with
6 Proposal for Buspirone Tablets
7 14 164
8 Email Chain, Subject "Mylan WAC"
9 15 213
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11 Subject "Mylan 4/15 Price Changes"
12 16 225
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14 17 230
15 "Clozapine and the Retail Pharmacy,"
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20 19 241
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22 2-27-2000, Subject "Staff Meeting 3/3/2000"
23 20 250
24 Email, Cunard to Moldin, 4-24-2000,
25 Subject "Nifedipine ER Information"
26 21 255
27 Email, Cunard to Bellina, 4-11-03,
28 Subject "Medicaid Status Chart.xls"
29 22 256
30 Email Chain, Subject "Product Launches"
31 23 268
32 Email Chain, Subject "Information Request"
33 24 268
34 Memo, Martin to Cunard and Duda, 8-7-01,
35 Subject "PHS Pricing"
36 25 268
37 Memo, Krinke and Workman to Cunard, Subject
38 "Fifth Annual 340B Coalition Conference"
39 26 282
40 Memo, Floyd to Third Party Contacts, Subject
41 "AWP Changes Effective September 23, 1999"
42 27 285
43 Fax Regarding AWP Changes Effective 10-20-99
44 28 286
45 Memo, Krajewska to Distribution, Subject,
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11 of Massachusetts V. Mylan, et al, 10-26-07
12 2 37
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14 Under Scrutiny"
15 3 49
16 "OIG Compliance Program Guidance for
17 Pharmaceutical Manufacturers"
18 4 101
19 Memo from Krinke, 7-8-99, Subject
20 "Additional AWP Revisions"
21 5 104
22 Redacted Email, Eichelberger to Cunard,
23 6-28-2000, Subject "Drug 7"
24 6 109
25 Redacted Documents Regarding Drug 7
26 7 120
27 Documents Regarding Application and Approval
28 of Clobetasol Propionate by State of Texas
29 8 134
30 Memo, Cunard to Krinke, 1-8-01,
31 Subject "Reimbursement Outline"
32 9 150
33 Memo, Workman to Cunard, 12-19-05,
34 Subject "Price Floors - Price Committee"
35 10 157
36 "FY 2000 Marketing Plan"
37 11 159
38 Documents Listing Mylan Employees and
39 Company Titles

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1 30 289
2 Memo, Morgan to Isaacs, 9-11-03
3 Subject "Mylan Nefazodone - FDB Launch Info"
4 31 289
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6 Regarding Revised Proposal for Wal-Mart
7 32 291
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13 34 293
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<p style="text-align: right;">Page 214</p> <p>1 call that person "Bill." 2 Do you see that? 3 A. Yes. 4 Q. Now, Wal-Mart was a big customer, wasn't it? 5 A. Wal-Mart was a customer. 6 Q. So Wal-Mart's not a big customer? 7 A. I can't speak now. At the time they were an 8 average-sized customer. 9 Q. Okay. So -- but you refer to somebody there 10 as "Bill," bbsprad@wal-mart.com. 11 Do you see that? 12 A. Yes. 13 Q. Who was Dan King and Bob Potter? 14 A. Dan King was a national account manager for 15 Mylan, and Bob Potter at this time was the 16 vice-president of sales for Mylan. 17 Q. Now, it's pretty short. Why don't you go 18 ahead and read what you said to Bill for the ladies 19 and gentlemen of the jury. 20 A. "Bill, as a follow-up to our conversation 21 yesterday, please find the attached spread sheet 22 outlining pricing changes recently implemented. I 23 have outlined our previous and new WAC prices where 24 applicable as well as competitive WAC prices and the 25 latest HCFA FULs. As you can see, we should not be</p>	<p style="text-align: right;">Page 216</p> <p>1 world would you be telling the buyer for Wal-Mart what 2 you're telling him here? 3 MR. ESCOBAR: Objection for the form. 4 THE WITNESS: Well, as I read and have 5 read this, where it states, "As a follow-up to our 6 conversation yesterday," I would interpret this that 7 this was a request made by Mr. Spradlin, a customer in 8 this case, that I was responding to. 9 Q. (BY MR. BREEN) And -- and -- but -- but why 10 are you talking about FULs and saying that "We should 11 not be the supplier holding down reimbursement in any 12 scenario"? What do you mean by that? 13 Let me ask you this question: I thought 14 it was your belief at Mylan that you had no control 15 over reimbursement, no -- you had no influence on 16 reimbursement. 17 MR. ESCOBAR: What's -- what's the 18 question? 19 Q. (BY MR. BREEN) So why would you be telling 20 the buyer at Wal-Mart that Mylan would not be the 21 supplier holding down reimbursement in any scenario? 22 MR. ESCOBAR: Objection to the predicate 23 to the question. 24 THE WITNESS: I -- I'm sorry. What is 25 the question?</p>
<p style="text-align: right;">Page 215</p> <p>1 the supplier holding down reimbursement in any 2 scenario. Please review this at your convenience. 3 Feel free to contact me with any questions. 4 800-848-0461, extension 4098. Thanks, Bob." 5 Q. Okay. And you're vice-president of marketing 6 at this point in time, correct? 7 A. Yes. 8 Q. So why would the vice-president of marketing 9 of -- well, let me ask this question. What was Bob's 10 job at Wal-Mart? 11 MR. ESCOBAR: "Bill," you mean? 12 MR. BREEN: Bill's job. Sorry. 13 THE WITNESS: As I recall, Bill was a 14 buyer for Wal-Mart. 15 Q. (BY MR. BREEN) Why would the vice-president 16 of marketing of Mylan be writing to a buyer of 17 Wal-Mart, showing him your previous and new WAC prices 18 and your previous and new AWP's and the HCFA FULs and 19 then say, quote, "As you can see, we should not be the 20 supplier holding down reimbursement in any scenario"? 21 Do you see that? 22 A. Yes. 23 Q. If you really weren't involved in 24 reimbursement and you never analyzed any FULs or WAC 25 effects on FULs while you were at Mylan, why in the</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. (BY MR. BREEN) Why were you telling 2 Mr. Sprad (sic) at Wal-Mart that Mylan would not be 3 the supplier holding down reimbursement in any 4 scenario? 5 A. I don't recall, but -- but, once again, I 6 believe this was responding to some request that he 7 had made. And, once again, it's a -- it's a reporting 8 of -- of just published pricing. 9 Q. All right. Were you -- but your -- according 10 to your email, you're trying to show him that Mylan 11 will not be holding down reimbursement in any 12 scenario. 13 Do you see that? 14 MR. ESCOBAR: Objection for the form. 15 Q. (BY MR. BREEN) Well, let me ask this 16 question: Is one of the purposes of this email to 17 demonstrate to Mr. Sprad (sic) at Wal-Mart that Mylan 18 would not be the supplier holding down reimbursement 19 in any scenario? 20 A. I don't know and -- and, once again, it's a 21 reporting of -- of data. And at the time then and I 22 can't think now that -- that I could do anything that 23 would have said that, you know, we won't hold it down 24 or -- or had an ability to -- to impact that. 25 Q. So you -- you -- as a matter of fact, you</p>

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1 didn't believe you could impact reimbursement on
2 March 16th, 2001, did you?

3 A. No.

4 Q. So you just happened to tell Mr. Sprad (sic)
5 that you would not be the supplier holding down
6 reimbursement in any scenario even though you didn't
7 think you could impact reimbursement.

8 Is that your testimony?

9 A. Yes.

10 Q. Okay. So -- but back in March of '01, were
11 you aware that the Health Care Financing
12 Administration or Centers for Medicaid & Medicare
13 Services, later known as CMS, would set FULs based
14 upon the published prices for -- for drugs?

15 A. I didn't know and -- and don't know today
16 what the -- what the methodology is for setting FULs.

17 Q. Well, did somebody else typically write your
18 emails to the buyers at Wal-Mart?

19 A. No, not that I recall.

20 Q. So if -- if you wrote this email, then --
21 then -- then you supposedly knew what you were talking
22 about at the time, right?

23 A. Yes.

24 Q. Okay. So at the time -- and you knew what
25 you were talking about at the time -- you told the

1 reimbursement?

2 MR. ESCOBAR: Objection for the form.

3 THE WITNESS: That was a statement made.
4 That was my perspective but, as indicated, at this
5 time nor now do I know how an FUL is created or what
6 goes into it. Mr. Spradlin may very well have
7 responded back saying, "Well, it's different and
8 here's why." I couldn't say.

9 It was -- it was my opinion, and it's --
10 I don't believe anywhere here I'm saying that "We're
11 authorities on this, and we know better than you," as
12 a pharmacy customer.

13 MR. BREEN: Objection, nonresponsive.
14 Let me ask the question again another way.

15 Q. (BY MR. BREEN) While you were at Mylan, did
16 you ever discuss with a customer the topic of their --
17 of reimbursement by Medicaid programs and Abbott's
18 reported prices in -- I'm sorry -- Mylan's reported
19 prices in the same communication?

20 MR. ESCOBAR: Objection for the form.

21 THE WITNESS: Not that I can recall, no.

22 Q. (BY MR. BREEN) So is it your testimony,
23 then, that in Exhibit 15 you're not talking to the
24 buyer at Wal-Mart about the topic of Medicaid
25 reimbursement and you're not talking to the buyer at

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1 buyer at Wal-Mart that, "As you can see, we should not
2 be the supplier holding down reimbursement in any
3 scenario," right?

4 A. Yes. That's what it says.

5 Q. And you're -- you -- you make that reference
6 right after you -- you show him the latest HCFA FULs.

7 A. Well, the HCFA FULs are in the spread sheet,
8 yes.

9 Q. But it's right after the reference to FULs in
10 your -- in your email, right?

11 A. Yes.

12 Q. And you knew FULs to be the federal upper
13 limit on reimbursement for Medicaid reimbursement,
14 correct?

15 A. Yes.

16 Q. Okay. Now, I'll ask the question again.

17 While you were at Mylan, did you ever,
18 or anybody else, to your knowledge, at Mylan, discuss
19 how Mylan's price reporting would affect a customer's
20 reimbursement with a customer?

21 A. Not that I recall, no.

22 Q. So is it your testimony to the Court and the
23 jury today that Exhibit -- in Exhibit 15 you were not
24 talking to your customer, Wal-Mart, about the topic of
25 whether or not Mylan's reported prices will affect

1 Wal-Mart about the topic of Abbott's -- or, rather,
2 Mylan's reported WACs?

3 MR. ESCOBAR: Objection for the form.

4 THE WITNESS: That's correct. I see
5 nothing in this document that talks about Medicaid
6 reimbursement.

7 Q. (BY MR. BREEN) And so it's your testimony to
8 the Court and the jury that HCFA FULs have nothing to
9 do with Medicaid reimbursement; is that correct?

10 MR. ESCOBAR: Objection for the form.

11 THE WITNESS: No. I don't believe I
12 said that.

13 Q. (BY MR. BREEN) All right. I'll ask the
14 question, then. Does -- is this a communication where
15 you discuss as a topic, you mention, Medicaid
16 reimbursement in any way, shape or form?

17 MR. ESCOBAR: Objection for the form.

18 THE WITNESS: I see no reference on any
19 of these documents to Medicaid reimbursement.

20 Q. (BY MR. BREEN) Okay. So is it your
21 testimony to the Court and the jury that, when you
22 talk about HCFA FULs, that has nothing to do with
23 Medicaid reimbursement?

24 MR. ESCOBAR: Objection for the form.

25 THE WITNESS: It -- it -- it could, but

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<p style="text-align: right;">Page 262</p> <p>1 "Mylan Reimbursement Model." 2 Do you see that? 3 A. Yes, sir. 4 Q. The numbers you have in there, are those 5 numbers from an actual transaction, or are those like 6 projected pro forma examples to try to get a handle on 7 the quantitative factors here? 8 A. As I review all this information, I would say 9 there's no actuals. This is all just -- just 10 projected and -- and just analytical models, trying to 11 figure it out. 12 Q. Okay. Under "Mylan Reimbursement" where you 13 got "From reimbursement, \$694.58" -- do you see that? 14 A. Yes. 15 Q. And then under that "Minus \$60.76, 1.5 times 16 brand reimbursement." Do you see that? 17 A. Yes. 18 Q. Then you get to \$82.18. Do you see that? 19 A. Yes. 20 Q. That's the likely margin for who, the 21 pharmacy or Mylan? Or I should say is that the likely 22 margin for the customer or for Mylan? 23 MR. ESCOBAR: Objection for the form. 24 THE WITNESS: I believe that's an 25 estimate of pharmacy --</p>	<p style="text-align: right;">Page 264</p> <p>1 profit on the Mylan generic etoposide than it is on 2 the VePesid sold by -- I think Bristol sold VePesid, 3 BMS? 4 A. Yes. That was a high-level assumption that 5 we would need to deliver incremental value to the 6 pharmacy for -- for them to utilize the product. 7 Q. Okay. So VePesid was the brand sold by BMS, 8 which is Bristol-Myers Squibb, right? 9 A. I believe that's correct, yes. 10 Q. And -- and you're trying to do some 11 quantification or some -- some -- set price so that 12 the pharmacy or the -- whoever's buying the product, 13 be it a pharmacy or a physician, makes 50 percent 14 again more profit or margin than it would on the brand 15 product, correct? 16 MR. ESCOBAR: Objection for the form. 17 THE WITNESS: Well, as -- as I stated, 18 that's a baseline assumption. But when you look at my 19 email and looking at my -- my suggested D level 20 pricing, it would be less than that amount. 21 Q. (BY MR. BREEN) Okay. How -- okay. What -- 22 would the margin, then, be -- the comparative brand 23 margin be based upon your recommended price? 24 MR. ESCOBAR: Objection for the form. 25 THE WITNESS: I don't know exactly what</p>
<p style="text-align: right;">Page 263</p> <p>1 MR. BREEN: Okay. 2 THE WITNESS: -- at that point in time. 3 Q. (BY MR. BREEN) And when you do this 4 1.5 times brand reimbursement, you see it there 5 above -- right there above that \$82.18 number? 6 A. Yes. 7 Q. And then you go to the first page and it says 8 at the -- "Etoposide -- If \$60.76 is 1.5 times brand 9 margin." Do you see that? 10 A. Yes. 11 Q. I'm assuming there's some significance of 12 1.5 times brand margin. 13 MR. ESCOBAR: Objection for the form. 14 Q. (BY MR. BREEN) Would I be correct in that 15 assumption, that there's something significant about 16 1.5 times brand margin if you put it in the 17 document -- 18 MR. ESCOBAR: Objection for the form. 19 Q. (BY MR. BREEN) -- and you based your 20 computations on it somehow? 21 MR. ESCOBAR: Same objection. 22 THE WITNESS: Yes. 23 Q. (BY MR. BREEN) Okay. So is 1.5 times brand 24 margin -- does that mean you're trying to -- to work 25 the numbers so that the pharmacy makes 50 percent more</p>	<p style="text-align: right;">Page 265</p> <p>1 it would be. 2 Q. (BY MR. BREEN) Where was your recommended 3 price at? 4 A. As I read this, I recommended D of \$633.80. 5 Q. So you actually recommended a higher price 6 for etoposide, right? 7 A. Yes. 8 MR. ESCOBAR: Higher than what? 9 Q. (BY MR. BREEN) Higher than the \$60.76 that 10 would have resulted in 1.5 times brand margin, right? 11 A. To be accurate, I believe higher than the D 12 price of \$612.40 that is laid out in the exhibit. 13 Q. Okay. So \$612.40, is that a price that 14 you're actually going to charge the customer? 15 A. That's a proposed price, yes. 16 Q. Okay. So would the customer make more or 17 less margin with your proposed price than with the 18 \$60.76? 19 A. I believe less. 20 Q. All right. And the reason there's such a -- 21 the \$60.76 is -- is -- should really be considered 22 \$607.60 to compare with the 633.80, correct? 23 MR. ESCOBAR: Objection for the form. 24 THE WITNESS: No. That's not accurate. 25 Q. (BY MR. BREEN) All right. Well, then --</p>

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